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To: PCT Legal Office  
Commissioner for Patents

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From: Valerie J. Foran  
617-526-5138

Date: July 29, 2002

RE: **PCT/US97/18528**  
**BIOCERAMIC COMPOSITIONS**  
**Serial No. 09/284,436**

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Client Matter Number: 112430.132

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
(Attorney Docket No. 112430.132US2)

In re Application of:	Lee et al.	)	PCT Examiner:	Dombroske
Serial No:	09/284,436	)	)	)
Int'l. Filing Date:	October 16, 1997	)	)	PCT No: PCT/US97/18528
Title:	BIOCERAMIC COMPOSITIONS	)	)	)

\*\*\*\*\*

**CERTIFICATE OF FACSIMILE MAILING UNDER 37 CFR §1.8(a)**

I hereby certify that this correspondence is being sent via facsimile to (703-308-6459) PCT Legal Office, Commissioner for Patents, Washington, DC 20231 on the date indicated below.

Date: 7/29/00

Heather K May

Heather May

\*\*\*\*\*

PCT Legal Office  
Commissioner for Patents  
Washington, D.C. 20231

**PETITION PURSUANT TO 37 C.F.R. §1.137(b) TO REVIVE AN UNINTENTIONALLY  
ABANDONED PATENT APPLICATION**

Dear Sir:

The U.S. Patent and Trademark Office (PTO) records indicate that the above-referenced application has been abandoned because a timely response was not filed to the formal "Discussion" (copy enclosed) by PCT Legal Examiner George M. Dombroske, mailed on October 1, 2001. Applicants submit that a timely response was indeed filed on November 27, 2001, a copy of which is enclosed with this Petition. The non-receipt by the PTO of the November 27, 2001 response was unintentional.

Applicants hereby petition to revive this application and requests that the Applicants' "Renewed Petition Under 37 CFR §1.48(a)" filed on June 8, 2000 (copy enclosed) be granted.

Please charge our Deposit Account No. 08-0219 for the \$130.00 petition fee and any other fees which might be due in connection with this matter.

U.S. Patent Application No. 09/28-~~486~~  
Petition to Revive  
Page Two

It is respectfully requested that all communications for this application be mailed to the attention of the attorney of record at the following address:

MaryRose Scozzafava, Ph.D.  
Hale and Dorr LLP  
60 State Street  
Boston, MA 02109

If there are any questions in connection with this submission, please contact the undersigned.

Respectfully submitted,  
HALE AND DORR LLP

Mary Rose Scozzafava  
MaryRose Scozzafava, Ph.D., Reg. No. 36,268  
Attorney/Agent for Applicants

Date: July 29, 2002  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6000  
(617) 526-5000 (Facsimile)



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

OCT 01 2001

Clark & Elbing LLP  
 176 Federal Street  
 Boston, MA 02110

*Reply to Decision  
on Applicants*  
 ACTION DUE \_\_\_\_\_  
 DUE DATE \_\_\_\_\_  
 ESP 12-1-01  
 INITIALS J.M.

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OCT 04 2001

CLARK &amp; ELBING

In re Application of  
 Dosuk D. Lee et al.  
 Application No.: 09/284436  
 PCT No.: PCT/US97/18528  
 Int. Filing Date: 16 October 1997  
 Priority Date: 16 October 1996  
 Attorney's Docket No.: 04712/02000F  
 For: Bioceramic Compositions

HALF AND DORR LLP  
 OCT 31 2001

INTELLECTUAL PROPERTY  
 DEPARTMENT

DECISION & DORR DOCKETING  
 RE: 112430-132 US2  
 Action Date: 12-1-01  
 Action to be Taken: "E"  
 Docketed by: On On: 10-31-01

This is a decision on applicants' "Renewed Petition Under 37 CFR §1.48(a)" filed on 08 June 2000, which is being treated under 37 CFR 1.497(d).

DISCUSSION

A grantable petition under 37 CFR 1.497(d) must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (2) an oath or declaration by the actual inventor or inventors as required under 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47; (3) the petition fee set forth in 37 CFR 1.17(i); and (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (See 37 CFR 3.73(b)). See Section 201.03 of the Manual of Patent Examining Procedure (M.P.E.P.). The communication mailed on 27 April 2000 indicated that requirements (1) and (3) had been satisfied.

With respect to requirement (2), the declaration filed on 08 June 2000 satisfies the requirement.

Regarding requirement (4), the "Petition to Correct inventorship-- Consent of Assignee" and "Certificate Under 37 CFR 3.73(b)" provide the consent of Etex Corporation. However, it is not clear that Etex Corporation is currently the assignee of the entire interest in this application. Specifically, on 10 April 2000, a "Security Agreement" was recorded in the USPTO (at Reel/Frame number 010710/0718), which purports to grant a security interest in favor of Medtronic Asset Management, Inc. in a plurality of applications, including this application. However, the same "Security Agreement" indicates, on its last page, that the "Total number of applications and patents involved" is "One." Thus, the assignment status of this application is not clear. It appears that Etex did not sign the "Consent of Assignee" to provide the

Appn. No. 09/284436

Page 2

**CONCLUSION**

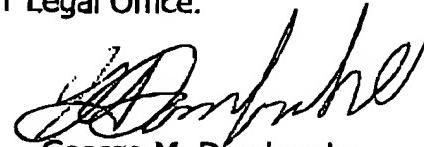
The petition under 37 CFR 1.497 (d) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497(d)". No additional processing fee is required.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Boris Milef  
PCT Legal Examiner  
PCT Legal Office



George M. Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (703) 308-6721  
Fax: (703) 308-6459

**HALE AND DORR LLP**  
COUNSELORS AT LAW

[www.haledorr.com](http://www.haledorr.com)

60 STATE STREET, BOSTON, MASSACHUSETT 02109  
617-526-6000 - FAX 617-526-5000

November 27, 2001

George M. Dombroske  
PCT Legal Examiner  
United States Patent and Trademark Office  
Assistant Commissioner of Patents  
Box PCT  
Washington, DC 20231

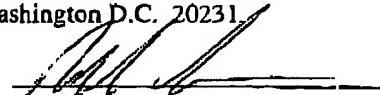
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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)**

I hereby certify that this correspondence and any enclosures referenced herein are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner of Patents, Box PCT, Washington D.C. 20231.

Nov 25 2001

Date



Michael Leccese

---

Re: Application Number: 09/284,436  
PCT No.: PCT/US97/18528  
Title: Bioceramic Compositions  
Int. Filing Date: 16 October 1997  
Our Ref.: 112430.132US2

**RESPONSE NOTICE TO RENEWAL PETITION UNDER 37 CFR §1.48(a)**  
**FILED ON 8 JUNE 2000, WHICH IS BEING TREATED UNDER 37 CFR**  
**§1.497(d)**

Dear Mr. Dombroske:

In an October 1, 2001 decision on Applicants' Renewal Petition under 37 CFR § 1.48(a) filed on June 8, 2000, clarification of the assignment status of the above references application was requested in view of a Security Agreement recorded at the United States Patent Office granting a security interest in the application.

Etex is the sole owner of the above referenced patent application. Etex has not assigned its rights in the application, however Etex has granted a Security Interest in the patent application to secure the payment of a certain Secured Convertible Promissory Note between Etex (Debtors) and Metronic (Secured Party). Currently Etex Corporation

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LONDON\*

Hale and Dorr LLP includes Professional Corporations

\* an independent joint venture law firm

Mr. Dombroske  
November 27, 2001  
Page 2

is not in default of its obligations to Metronic and until such time Medtronic may not exercise any rights in the collateral.

We believe this addresses your concerns in the October 1, 2001 decision, however, if you have further question please contact the undersigns attorney of record at the address below.

Respectfully yours,

*Mary Rose Scozzafava*  
Mary Rose Scozzafava  
Reg. No. 36,268

Date November 27, 2001

Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
Phone: (617)-526-6000  
Fax: (617)-526-5000

PATENT  
ATTORNEY DOCKET NO. 04712/02000F

Certificate of Mailing	
Date of Deposit: <u>June 8 2000</u>	Label Number: <u>EL419587133US</u>
I hereby certify under 37 CFR 1.10 that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" with sufficient postage on the date indicated above and is addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231. 	
Printed name of person mailing correspondence	Signature of person mailing correspondence

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dosuk D. Lee et al. Art Unit:  
Serial No.: 09/284,436 U.S. Filing Date: April 12, 1999  
PCT Serial No. PCT/US97/18528 PCT Filing Date: October 16, 1997  
Title: BIOCERAMIC COMPOSITIONS

Box PCT  
Assistant Commissioner for Patents  
Washington, D.C. 20231

ATTN: PCT Legal Office

RENEWED PETITION UNDER CFR §1.48(a)

Applicants hereby renew their petition for correction of inventorship under 37 CFR §1.48(a) and request reconsideration on the merits of the petition previously submitted on March 7, 2000, in view of documents submitted herewith.

In reply to the Communication Regarding Declaration mailed April 27, 2000, copies of the following documents are enclosed.

- Petition To Correct Inventorship - Consent of Assignee
- Combined Declaration and Power of Attorney under 37 CFR §1.56(a) executed by actual inventors.

In the decision dated April 27, 2000, the Legal Examiner considered the above-referenced Petition under 37 CFR §1.48(a) deficient because (1) the declaration accompanying the petition did not make clear that each inventor signed a complete copy of the declaration; and (2) the written consent of the assignee did not state that Dosuk D. Lee had authority to act on behalf of the assignee, nor did it establish assignee's ownership of the application in accordance with 37 CFR 3.73(b).

Applicants submit that the Combined Oath and Declaration submitted herewith unambiguously makes clear that each inventor signed a complete copy of the document and that the Declaration is proper. Furthermore, the newly executed Written Consent of Assignee includes the requested information and statements.

In view of the supplemental documentation, it is submitted that the Petition to Correct Inventorship is in condition for grant.

If there are any charges, or any credits, please apply them to Deposit Account No. 03-2095.

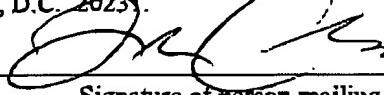
Respectfully submitted,

Date: June 8, 2000

Mary Rose Scozzafava  
Mary Rose Scozzafava, Ph.D.  
Reg. No. 36,268

Clark & Elbing LLP  
176 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045  
04712.02000F Renewed Petition Under 37 CFR 1.48(a).wpd

PATENT  
ATTORNEY DOCKET NO. 04712/02000F

Certificate of Mailing	
Date of Deposit: <u>June 8, 2000</u>	Label Number: <u>EL419587133US</u>
I hereby certify under 37 CFR 1.10 that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" with sufficient postage on the date indicated above and is addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231.	
Louis A. Cruz <u>Louis A. Cruz</u> Printed name of person mailing correspondence	 Signature of person mailing correspondence

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dosuk D. Lee et al.

Art Unit:

Serial No.: 09/284,436  
PCT/US97/18528

Examiner:

Filed: April 12, 1999

Title: BIOCERAMIC COMPOSITIONS

Director of Patents  
Washington, D.C. 20231PETITION TO CORRECT INVENTORSHIP -- CONSENT OF ASSIGNEE

As an officer of the concern to which the above captioned application has been assigned, I hereby consent to the correction of inventorship of this application from:

Dosuk D. Lee, Christian Rey, and Maria Aiolova

to:

Dosuk D. Lee, Christian Rey, Maria Aiolova, and Aliassghar Tofighi

**CERTIFICATE UNDER 37 CFR 3.73(b)**

Etex Corporation, a corporation of the state of Delaware, certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of:

An assignment from the inventor(s) of the patent application identified above. The assignment was:

Recorded in the Patent and Trademark Office at Reel 010037, Frame 0197 on June 21, 1999.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United

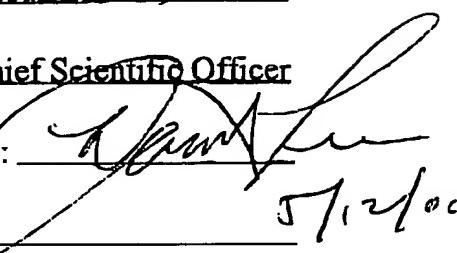
States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

ETEX CORPORATION  
38 Sidney Street  
Cambridge, MA 02139

By: Dosuk D. Lee, Ph.D.

Title: Chief Scientific Officer

Signature: 

Date: 5/12/01

04712.02000F Petition to Correct Inventorship - Consent of Assignee.wpd

**PATENT**  
**ATTORNEY DOCKET NO: 04712/02000F**

**COMBINED DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled **BIOCERAMIC COMPOSITIONS**, the specification of which

■ was filed on April 12, 1999 as Application Serial No. 09/284,436 and was described and claimed in PCT International Application No. PCT/US97/18528 filed on October 16, 1997 and as amended under PCT Article 19 on \_\_\_\_\_

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information I know to be material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed:

Country	Serial Number	Filing Date	Priority Claimed?
PCT	PCT/US97/18528	16 October 1997	Yes

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information I know to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Serial Number.	Filing Date	Status
08/729,354	16 October 1996	Pending
08/729,342	16 October 1996	Pending

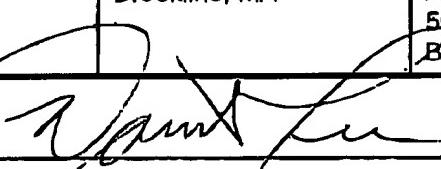
I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Paul T. Clark, Reg. No. 30,162, Karen L. Elbing, Ph.D. Reg. No. 35,238, Kristina Bieker-Brady, Ph.D. Reg. No. 39,109, Susan M. Michaud, Ph.D. Reg. No. 42,885, Mary Rose Scozzafava, Reg. No. 36,268.

Address all telephone calls to: Mary Rose Scozzafava, Ph.D. at 617/428-0200.

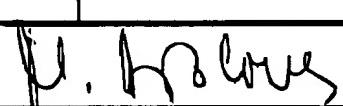
### COMBINED DECLARATION AND POWER OF ATTORNEY

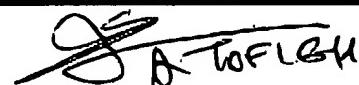
Address all correspondence to: Mary Rose Scozzafava, Ph.D. at Clark & Elbing LLP, 176 Federal Street, Boston, MA 02110.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Full Name (First, Middle, Last)	Residence Address (City, State, Country)	Post Office Address (Street, City, State, Country)	Citizenship
Dosuk D. Lee	Brookline, MA	Apt. 518 50 Longwood Avenue Brookline, MA 02146	U.S.A.
Signature: 			Date: 5/29/00

Full Name (First, Middle, Last)	Residence Address (City, State, Country)	Post Office Address (Street, City, State, Country)	Citizenship
Christian Rey	Aureville, Castanet, France	Lieu-dit "Les Dames" Aureville, F-31320 Castanet, France	France
Signature: 			Date: 5-11-00

Full Name (First, Middle, Last)	Residence Address (City, State, Country)	Post Office Address (Street, City, State, Country)	Citizenship
Maria Aiolova	Brookline, MA	123 Seawall Avenue Brookline, MA 02146	U.S.A.
Signature: 			Date: 5.11.00

Full Name (First, Middle, Last)	Residence Address (City, State, Country)	Post Office Address (Street, City, State, Country)	Citizenship
Aliassghar Tofighi	Belmont, MA	204 Waverly Street Belmont, MA 02178	France
Signature: 			Date: 05-11-00

27 APR 2000

**Patent and Trademark Office**Patent Cooper  
Legal Office

Address: Assistant Commissioner for Patents  
 Box PCT  
 Washington, D.C. 20231

Clark & Elbing LLP  
 176 Federal Street  
 Boston, MA 02110

In re Application of  
 Dosuk D. Lee et al.  
 Application No.: 09/284436  
 PCT No.: PCT/US97/18528  
 Int. Filing Date: 16 October 1997  
 Priority Date: 16 October 1996  
 Attorney's Docket No.: 04712/02000F  
 For: Bioceramic Compositions

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*PLM*  
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 ATTORNEY ATTENTION**

: COMMUNICATION  
 : REGARDING  
 : DECLARATION

This is a decision on applicants' "Petition to Correct Inventorship Under 37 CFR §1.48(a)" filed on 07 March 2000.

### **BACKGROUND**

This international application was filed on 16 October 1997, claiming an earliest priority date of 16 October 1996.

On 15 May 1998, a Demand electing the United States was filed in this international application. Accordingly, the deadline for entering the national stage in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 16 April 1999.

On 12 April 1999, applicants submitted a filing under 35 U.S.C. 371.

On 18 May 1999, a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (Form PCT/DO/EO/905) and a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) were mailed to applicant, requiring the submission of an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(e). The Form PCT/DO/EO/917 indicated that the declaration was defective because it was not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68.

On 18 June 1999, applicant filed a "Reply to Notification of Missing Requirements," which was accompanied by a "Combined Declaration and Power of Attorney" and a surcharge under 37 CFR 1.492(e).

A Communication was mailed to applicant on 17 February 2000, indicating that the declaration submitted on 18 June 1999 was not in compliance with 37 CFR

09/284436

-2-

1.497(a) in that sheets 2 and 3 of the declaration did not unambiguously identify the specification to which it was directed, and indicating that Aliassghar Tofighi was identified as a joint inventor in the declaration even though he was not named as a joint inventor in the published international application.

Applicants filed the instant petition on 07 March 2000.

### DISCUSSION

A grantable petition under 37 CFR 1.48(a) must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (2) an oath or declaration by the actual inventor or inventors as required under 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47; (3) the petition fee set forth in 37 CFR 1.17(i); and (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (*See* 37 CFR 3.73(b)). *See* Section 201.03 of the Manual of Patent Examining Procedure (M.P.E.P.). The petition satisfies requirements (1) and (3) *supra*.

With respect to requirement (2), the declaration accompanying the petition is not in compliance with 37 CFR 1.63 in that it is not clear that each signing inventor signed a complete copy of the declaration, attesting to the information appearing on each of pages 1-3. Rather, in view of the presence of two pages "2 of 3", it appears that at least some of the inventors may have signed only the page(s) bearing their own name(s). Accordingly, it would be inappropriate at this time to grant applicants' request for correction of inventorship.

Regarding requirement (4), the petition is accompanied by a document entitled "Petition to Correct Inventorship- Consent of Assignee." This "Consent" is signed by Dosuk D. Lee, Ph.D., "Chief Scientific Officer" of Etex Corporation. However, as explained at MPEP 201.03, the individual signing such a consent should specifically state that he or she has the authority to act on the behalf of the assignee. In the absence of such a statement, the consent will be accepted if it is signed by an appropriate official of the assignee (such as a president, vice president, secretary or treasurer) if the title is made of record. Regarding the instant case, the position of "Chief Scientific Officer" does not suggest the apparent authority to act on the behalf of the assignee in the sense that such authority is not intrinsic nor is it generally expected to be delegated to the position of Chief Scientific Officer.

Moreover, petitioner has not established the assignee's ownership of the application in accordance with 37 CFR 3.73. As discussed at MPEP 324, "The submission establishing ownership must be signed by a party authorized to act on behalf of the assignee." In this case, the submission is signed neither by a person

09/284436

-3-

in the organization having apparent authority to sign on behalf of the organization nor by a person who avers that he or she is empowered to sign the submission on behalf of the assignee. Furthermore, assignee has not "submitted" the required documentation of a chain of title under 37 CFR 3.73(b) in the sense that the "Consent" signed by Dosuk D. Lee, Ph.D. does not explicitly refer to the documents.

CONCLUSION

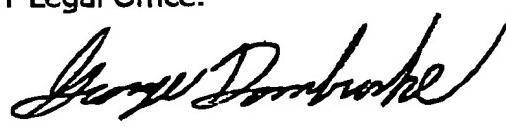
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ATTORNEY ATTENTION*  
The petition under 37 CFR 1.48 (a) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Leonard Smith  
PCT Legal Examiner  
PCT Legal Office



George M. Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (703) 308-6721  
Fax: (703) 308-6459